



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 6241-99

10 December 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 27 August 1967 for three years at age 17. The record reflects that you served without incident until 5 September 1968 when you were convicted by special court-martial of two periods of unauthorized absence (UA) totalling 235 days, from 3 March to 20 April and 19 April to 31 October 1968; and failure to obey a lawful order. You were sentenced to confinement at hard labor for six months, forfeitures of \$70 per month for six months and a bad conduct discharge. On 28 March 1969 the convening authority approved only so much of the sentence that provided for confinement and forfeitures for six months.

On 3 June 1969 you were convicted by a second special court-martial of a 29 day period of UA from 14 April to 12 May 1969 and breaking restriction. You were sentenced to confinement at hard labor for six months and forfeitures of \$70 per month for six months. However, the convening authority suspended the

confinement and forfeitures in excess of four months for the period of confinement and 12 months thereafter.

On 1 April 1970 you submitted a request for an undesirable discharge for the good of the service to avoid trial by court-martial for a 193 day period of UA from 27 August 1969 to 8 March 1970. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. A staff judge advocate reviewed the request and found it to be sufficient in law and fact. On 15 April 1970 the discharge authority approved the request and directed an undesirable discharge. You were so discharged on 28 April 1970.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, good post-service conduct, and the fact it has been more than 29 years since you were discharged. The Board noted your contentions to the effect that your court-martial convictions were only for isolated minor offenses, your ability to serve was impaired by a deprived family background and family problems, and you applied for a hardship discharge but the request was denied.

The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of two special court-martial convictions and the fact that you accepted discharge rather than face trial by court-martial for a period of UA of more than six months. Your total lost time due to UA and military confinement was 688 days. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of further confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. The Board thus concluded your discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board also noted your claim that the DD Form 214 contains an incorrect social security number. However, the copy of the social security card you enclosed with your application reflects the same social security number that appears on your DD Form 214. You provide no evidence that you were issued another social security number at the time of your service.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director